IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO. 12807 OF 2004

DATE OF DECISION: March 09, 2007

Parties Name

Major Singh and another

..PETITIONERS

VERSUS

The Deputy Collector and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MR. JUSTICE NIRMAL YADAV

PRESENT: Mr. Ashok Verma,
Advocate, for the petitioners.

Mr. Harish Rathee, Sr. D.A.G., Haryana;

Mr. G.R. P. Singh, Advocate, for respondent No. 4.

JASBIR SINGH, J. (oral)

Order.

Respondent No. 4 filed an application for fixing turn of water. It was his case that his land falls at the end and as such his turn be fixed after the petitioners and other co-sharers and also that he be held entitled to get residue water from the water course. That application was dismissed by the Deputy Collector, Sirsa, vide order dated May 21, 2003, by opining as under:

> "As per Civil Record, Sh. Kuldip Singh s/o Gobind Singh has separate ownership of 41 Kanals and 3 Marlas. Wari of separated area is allowed in his name with taking point 60/20 x 22 and delivery point 56 x 60 to Khata No. 90 and Khata No. 90 will deliver the turn at point (old) 57/23 x 60/4. The

> demand of Jhara is rejected, because, the case of Jhara has been finalized by SCO, SSA vide his decision Dt. 17-5-2001. Ziledar has not investigated the case properly. He has not recorded the statement of person who is using the Jhara. By notice of this Court, he was informed and he supplied the copy of S.C.O. Decision. There is no change of location of W/C, land and no cause is created for change of Jhara. Ziledar is directed not to create such type of case without any cause against the decision of highest authority of W/B. It is admitted that W/B is a temporary system and can be changed qfter one crop. But there should be some sufficient cause for any change."

Respondent No. 4 went in appeal, which was allowed by the Divisional Canal Officer vide order dated September 29, 2003 (Annexure P-6). Petitioner went in revision but the same was dismissed by the Superintending Canal Officer vide order dated July 21, 2004 (Annexure P-7).

We have heard learned counsel for the parties and have gone through the record, especially the site plans put on record by the parties. It is not in dispute and rather admitted before us that at an earlier point of time, brother of respondent No. 4 moved an application to shift his turn of water. Petitioner was a party in that case and vide order dated May 17, 2001,passed in appeal, claim of brother of respondent No. 4 was dismissed by observing thus:

> "Both the parties were heard in detail. The case file, Khaka plan and other relevant record available in the revenue missal

examined carefully. The arguments put forth by the appellants are convincing one. It has been observed that the area of the appellants falls at the end of the water-course. As such, I accept the appeal of the appellants and set aside the decision of the Divisional Canal Officer, Sirsa water Services, Division, Sirsa."

The aforesaid order has become final between the parties. It is very surprising that merely because the brothers have partitioned the land, the authorities below have allowed application of respondent No. 4 by stating that his land falls at the end. So long as order dated May 17, 2001, is in existence, order to the contrary cannot be passed. Otherwise also, site plan depicts that land of the petitioner falls at the end and that of respondent No. 4 prior thereto. To shift turn of water, it was claimed that land has been partitioned as per mutation. However, it has been noticed by the authorities that mutation regarding partition was not sanctioned. If that is so, the very basis of the claim before us becomes non-existent.

Consequently, we allow this writ petition and set aside the orders dated September 29, 2003 (Annexure P-6), passed by the Divisional Canal Officer, respondent No.2, and dated July 21, 2004 (Annexure P-7), passed by the Superintending Canal Officer,respondent No.3, and restore that of the Deputy Collector, respondent No.1, dated May 21, 2003 (Annexure P-5).

(Jasbir Singh)

Judge

(Nirmal Yadav)

March 09, 2007. Judge